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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

J.A.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

F058182

(Super. Ct. Nos. 09CEJ300052-1, 2,
3, 4)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jane Cardoza, Judge.

Kenneth K. Taniguchi Fresno County Public Defender, and Julie Ann Bowler Defense Attorney, for Petitioner.

No appearance for Respondent.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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*Before Levy, A.P.J., Cornell, J., and Gomes, J.

Petitioner (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's orders issued at a contested dispositional hearing denying her reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to her daughter S. and three sons, A., I., and N. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In February 2009, then 10 year-old S., 8 year-old A., 7 year-old I., and 3 year-old N. were removed from the custody of their maternal grandmother after she was arrested for being under the influence of methamphetamine and possessing drug paraphernalia, which was accessible to the children. In addition, the home was unsafe and unsanitary.

The Fresno County Department of Children and Family Services (department) filed a dependency petition on the children's behalf, alleging petitioner's drug abuse (methamphetamine and marijuana) prevented her from safely parenting the children and she made an inappropriate plan of care for them by leaving them in the care of their maternal grandmother. The juvenile court ordered the children detained and ordered the agency to provide petitioner services, including reasonable supervised visits. The children were placed in licensed foster care.

During an interview with the social worker, S. stated petitioner did not live with her and her siblings. A. confirmed this and added that petitioner left them all the time and their maternal grandmother and uncle took care of them.

In late February 2009, petitioner completed a court-ordered substance abuse evaluation, resulting in a referral for intensive inpatient treatment. Petitioner told the evaluator she used marijuana for the prior 10 years and methamphetamine for the prior 6 years. She also reported attending a one-year inpatient treatment program, which was

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

court-ordered in 2005 as a condition of probation. Petitioner graduated from the program in 2007 after 18 months. However, she was unable to participate in the graduation ceremony because she relapsed the day she was released. She subsequently violated probation twice for testing positive for drugs and tested positive for methamphetamine and marijuana over three consecutive days in late February 2009. In early March 2009, petitioner entered a residential drug treatment program.

At a contested jurisdictional hearing in April 2009, the juvenile court adjudged the children dependents of the court. The court set the dispositional hearing for June 2009.

In its dispositional report, the agency recommended the juvenile court deny petitioner reunification services pursuant to section 361.5, subdivision (b)(13) because of her extensive, abusive and chronic use of methamphetamine and resistance to court-ordered drug treatment by relapsing following inpatient treatment in 2007. The agency also opined reunification services would not serve the children's best interests because, though the children had a significant bond with petitioner, the bond was more akin to a friendship than a mother/child relationship. In addition, the children considered their home to be with their maternal grandmother and the children were not upset at having to separate from petitioner at the end of visits.

At petitioner's request, the juvenile court set the matter for a contested dispositional hearing, which it conducted in July 2009. Petitioner did not dispute that there was a factual basis to warrant denying her reunification services under section 361.5, subdivision (b)(13). Rather, she argued the juvenile court should nevertheless exercise its discretion and offer her services because it would serve the children's best interests.

The social worker testified visits between petitioner and the children went well. However, petitioner interacted with the children as if she were an adult sibling. She attempted to correct the children but they did not respond to her and petitioner did not

follow through. In addition, the children consistently stated they wanted to go home with their maternal grandmother.

The social worker further testified petitioner completed inpatient drug treatment on May 31, 2009, she but did not know if petitioner was participating in aftercare. She opined petitioner's prognosis for reunification was poor based on her past failed treatment, her failure to enter aftercare promptly after completing inpatient drug treatment, and her failure to drug test after completing the program.

Petitioner testified she was participating in aftercare, which she began on July 8, 2009. In addition, she was drug testing and admitted missing three tests from mid-June to early July. She also testified she was participating in a parenting class and only had two to three weeks left to complete. She was applying the parenting skills she learned during visitation and as a result, the children were more responsive to her. She testified she always lived with her mother and admitted leaving the children "now and then" but stated she always came back. She could not understand how the children could view her as an older sister rather than their mother.

At the conclusion of the hearing, the juvenile court denied petitioner reunification services as recommended and set a section 366.26 hearing to implement a permanent plan.

DISCUSSION

Petitioner argues reunification services are in her children's best interest. Therefore, she contends, the juvenile court abused its discretion in denying her reunification services. We disagree.

Where the juvenile court properly finds a basis for denying a parent reunification services under section 361.5, subdivision (b)(13), as in this case, it may still order reunification services if it finds by clear and convincing evidence reunification is in the best interest of the child. (§ 361.5, subd. (c).) A juvenile court's decision to deny a

parent reunification services cannot be reversed absent a clear abuse of discretion. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

On appeal, petitioner bears the burden of affirmatively showing error on the record. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We conclude, based on the record as summarized above, petitioner failed to meet her burden.

In arguing services would serve the children’s best interest, petitioner points to the progress she made in services and the children’s love for her. Specifically, she cites her sobriety, participation in aftercare, and improved discipline and control of the children. She contends denying her services would cause the children “irreparable harm.” She claims N. cries to go with her at the conclusion of visits and S. refused to go to school because she wanted to be with petitioner.

However, petitioner ignores other compelling evidence disfavoring reunification services; namely, the absence of a parent/child bond between her and the children and her poor prognosis for recovery. In her pursuit of drugs, petitioner became more of an older sibling who they loved but did not consider a parent. Further, petitioner demonstrated difficulty committing to recovery. For reasons not stated on the record, she took longer to complete the yearlong program in 2007 than was necessary. Once out of the confines of the treatment program, she relapsed. In a somewhat similar fashion, she delayed entering aftercare after completing residential drug treatment in May 2009. In the interim, she missed several drug tests knowing they would count as presumptively positive.

On balance, petitioner's progress at the end was far outweighed by her demonstrated lack of commitment to parenting her children and to recovery. Consequently, the juvenile court could reasonably conclude the children's interests would best be served by providing the children the permanency and stability of a permanent home. Accordingly, we find no abuse of discretion in the juvenile court's decision to deny petitioner reunification services. We affirm the juvenile court's findings and orders and deny the writ petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.